SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 465

ALASKA PACKERS ASSOCIATION, A CORPORATION,

Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND JUAN PALMA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT UNDER RULE 12.

This proceeding was originally instituted by the appellee Juan Palma, an alien, not resident in the United States, against appellant before the appellee Industrial Accident Commission of the State of California for adjustment of said Palma's claim for compensation alleged to be due him as a result of injury on June 3, 1932, arising out of and in the course of his employment as a laborer with appellant at Kvichak, in the Territory of Alaska. Appellant in said proceeding interposed the defense that the Industrial Accident Commission of the State of California was without jurisdiction to entertain said Palma's application for

adjustment of claim, because both Palma and appellant were subject at the time of the alleged injury to the Workmen's Compensation Act of Alaska, chap. 77 of the Session Laws of Alaska, 1927, pp. 147-179 and chap. 25 of the Session Laws of Alaska, 1929, and because both Palma and appellant had agreed in the contract of hire that as the only labor contemplated by the agreement was to be performed in the Territory of Alaska and as appellant had elected to be bound by the provisions of the said Alaska Workmen's Compensation Act, the appellee Palma as an incident of the contract of hire also accepted and agreed to be bound by the provisions of the Alaska Workmen's Compensation Act for any and all injuries arising out of and in the course of his employment. Palma further agreed to accept as his exclusive remedy for any and all industrial injuries the provisions of the Alaska Workmen's Compensation Act. Nevertheless, the appellee Industrial Accident Commission of the State of California assumed jurisdiction over the proceeding for adjustment of Palma's claim and over the parties, and on April 17, 1933, entered its findings and award by the terms of which it found that Palma and appellant were, at the time of the injury alleged in the application for adjustment of claim, subject to the provisions of the California Workmen's Compensation, Insurance and Safety Act of 1917, the contract of hire having been made and entered into in the State of California, and awarded Palma the sum of $15.13 a week beginning August 13, 1932, and continuing indefinitely thereafter, together with the cost of all medical, surgical or hospital treatment necessary to cure and relieve from the effects of said injury.

On writ of review by the Supreme Court of the State of California to appellee, the Industrial Accident Commission of the State of California, that court affirmed the award of said appellee in favor of Palma. The opinion of the court

has not been officially reported, but is printed in 88 Cal. Dec. 75 and in 34 P. (2d).

1. The Jurisdiction of the Supreme Court of the United States.

The appellant submits that this court has jurisdiction to review upon appeal the judgment of the Supreme Court of the State of California in this case under the provisions of subdivision (a) of section 237 of the Judicial Code (28 U. S. C. A., Sec. 344(a)), and section 1 of the act of January 31, 1928, chap. 14 (45 Stats. 54; 28 U. S. C. A., Sec. 861(a)).

The case is one in which there is drawn in question the validity of the California Workmen's Compensation, Insurance and Safety Act of 1917 (Cal. Stats. 1917, p. 831) on the ground of its being repugnant to the Constitution of the United States and in which the decision of the Supreme Court of California is in favor of the statute.

More specifically, appellant challenges on constitutional grounds the validity of sections 27(a)* and 58** of the

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* "Sec. 27. (a) No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act, but nothing in this act contained shall be construed as impairing the right of the parties interested to compromise, subject to the provisions herein contained, any liability which may be claimed to exist under this act on account of such injury or death, or as conferring upon the dependents of any injured employee any interest which such employee may not divert by such compromise or for which he, or his estate, shall, in the event of such compromise by him, be accountable to such dependents or any of them."

** "Sec. 58. The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this State in those cases where the

California Workmen's Compensation, Insurance and Safety Act as they have been applied by the Supreme Court of the State of California to the injury and agreement involved in this case.

It is settled that the unconstitutional application of a State statute to a particular transaction by the highest court of that State is a ground for review on appeal by the Supreme Court of the United States under the statutes quoted above.

Fiske v. *Kansas*, 274 U. S. 380, 385;
Cudahy Co. v. *Parramore*, 263 U. S. 418, 422;
Ward & Gow v. *Krinsky*, 259 U. S. 503, 510;
Dahnke-Walker Co. v. *Bondurant*, 257 U. S. 282, 288-290;
Eureka Pipe Line Co. v. *Hallanan*, 257 U. S. 265, 270-271;
St. Louis, etc., Ry. Co. v. *Wynne*, 224 U. S. 354, 359.

In applying sections 27(a) and 58 to the transaction in question, the Supreme Court of the State of California held that section 27(a) forbade and rendered null and void the agreement contained in the contract of hire*; that the

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injured employee is a resident of this State at the time of the injury and the contract of hire was made in this State, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act."

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* "Section 11. As the only labor contemplated by this contract is to be performed in the Territory of Alaska, and as the Contractor has elected to be bound by the provisions of the Alaska Workmen's Compensation Act, Chapter 25 of the laws of Alaska, 1929, pages 46 to 79 and amendments thereto, the parties of the second part hereby agree, as an incident of this contract of employment, to accept and be

parties; contemplating the labor to be performed wholly within the Territory of Alaska, elected as their exclusive remedy for industrial injury the provisions of the Alaska Workmen's Compensation Act.

The appellant contends that the imposition of liability for compensation as provided by the California Workmen's Compensation, Insurance and Safety Act to the injury alleged herein amounts to:

1. A denial of full faith and credit of the Alaska Workmen's Compensation Act and a violation of sec. 905, Revised Statutes (28 U. S. C. A. sec. 687-8);

2. Constitutes an invasion of the exclusive jurisdiction of the United States Congress over the Territory of Alaska;

3. Constitutes a deprivation of property without due process of law, as section 27(a), as construed and applied in this case, unreasonably and arbitrarily deprives appellant of the freedom of contract; and

4. Constitutes an attempted regulation of commerce passing beyond the borders of the State in violation of the commerce clause in the Constitution of the United States.

These questions were raised in the Supreme Court of California in the petition for writ of review and in the briefs in support thereof, as well as at the hearing before the Supreme Court of California on return of the writ of review and in the petition for rehearing. In affirming the award of appellee Industrial Accident Commission of the

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bound by the provisions of the said Workmen's Compensation Act of Alaska for any and all injuries arising out of and in the course of their employment, and further agree to accept as their exclusive remedy for any and all industrial injuries, the provisions of the said Workmen's Compensation Act of Alaska."

State of California and directing judgment for appellee Juan Palma against appellant, the Supreme Court of the State of California directly decided in favor of the validity of the statute as applied to the injury and agreement of record in this case and against the contention that its application to the facts of the case was unconstitutional.

2. **The State Statute, the Validity of Which Is Involved.**

The California statute, the validity of which is drawn in question by the judgment of the Supreme Court of the State of California from which this appeal is taken, is the California Workmen's Compensation, Insurance and Safety Act of 1917 (Cal. Stats. 1917, p. 831). The sections of the act material to this case provide:

> "Sec. 6. (a) Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:
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> "(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this act.
>
> "(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.
>
> "(3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted.
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> . . . . . .

"Sec. 27. (a) No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act, but nothing in this act contained shall be construed as impairing the right of the parties interested to compromise, subject to the provisions herein contained, any liability which may be claimed to exist under this act on account of such injury or death, or as conferring upon the dependents of any injured employee any interest which such employee may not divert by such compromise or for which he, or his estate, shall, in the event of such compromise by him, be accountable to such dependents or any of them.

"(b) The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in his employment when subject to the provisions of this act, and no release of liability or compromise agreement shall be valid unless it provide for the payment of full compensation in accordance with the provisions of this act or unless it shall be approved by the commission.

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"Sec. 58.* The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those

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*The provisions of the Alaska Act, the existence or constitutionality or legality of which is denied, are:

"Be it enacted by the Legislature of the Territory of Alaska:

"Section 1. Any person, or persons, partnership, joint stock company, association or corporation employing five or more employees in connection with any business, occupation, work, employment, or industry carried on in this Territory, * * * shall be liable to pay compensation * * * to each of * * * its employees who receives

cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act."

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a personal injury by accident arising out of and in the course of his * * * employment * * * in all cases where the employee * * * so injured had not, prior to the time of being so injured, given notice of his * * * election to reject the provisions of this Act in the manner * * * provided.

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"Section 10. The right to compensation for an injury and the remedy therefor granted by this Act shall be in lieu of all rights and remedies as to such injury now existing either at common law or otherwise, and no rights or remedies, except those provided for by this Act, shall accrue to employees entitled to compensation under this Act while it is in effect; nor shall any right or remedy, except those provided for by this Act accrue to the personal or legal representative, dependents, beneficiaries under this Act, or next of kin of such employee.

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"Section 25. No action for the recovery of compensation hereunder shall be brought in any court holden outside of the judicial division in which the injury occurred, out of which the right to compensation arises, except in cases where service can not be had on the employer in the judicial division where the injury occurred. No action for the recovery of compensation hereunder shall in any case be brought in any court outside of the Territory of Alaska, except in cases where it is not possible to obtain service of summons upon the defendant in said Territory, and in all such cases the plaintiff must plead and prove his inability to obtain service of summons upon the defendant within the Territory of Alaska."

In *Quong Ham Wah Company* v. *Industrial Accident Commission*, 184 Cal. 26, the limitation of the benefits of the act to residents was held to be in violation of the Federal Constitution. Certiorari denied by the opinion reported in 255 U. S. 445, 65 L. Ed. 723.

3. The Date of the Judgment Sought to be Reviewed and the Date Upon Which Application for Appeal was Presented.

The judgment of the Supreme Court of the State of California, which affirmed the award of appellee Industrial Accident Commission of the State of California, was entered July 5, 1934. The petition for rehearing was denied on August 2, 1934, and the judgment, therefore, became final on August 4, 1934 (Rule 30, sec. 1 of the Rules of the Supreme Court of the State of California). The application for appeal was presented August 23.

Dated August 23, 1934.

Respectfully submitted,

FRANK D. MADISON,
FRANCIS GILL,
Attorneys for Appellant.